

# HB3631



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB3631

Introduced 2/17/2023, by Rep. Hoan Huynh

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/513b1

Amends the Pharmacy Benefit Managers Article of the Illinois Insurance Code. Provides that a pharmacy benefit manager shall not prohibit a pharmacist or pharmacy from, or indirectly punish a pharmacist or pharmacy for, making any written or oral statement or otherwise disclosing information to any federal, State, county, or municipal official, including the Director of Insurance or law enforcement, or before any State, county, or municipal committee, body, or proceeding under specified circumstances. Provides that the provisions apply to contracts entered into or renewed on or after July 1, 2023 (rather than July 1, 2022).

LRB103 30054 BMS 56477 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Section 513b1 as follows:

6 (215 ILCS 5/513b1)

7 Sec. 513b1. Pharmacy benefit manager contracts.

8 (a) As used in this Section:

9 "340B drug discount program" means the program established  
10 under Section 340B of the federal Public Health Service Act,  
11 42 U.S.C. 256b.

12 "340B entity" means a covered entity as defined in 42  
13 U.S.C. 256b(a)(4) authorized to participate in the 340B drug  
14 discount program.

15 "340B pharmacy" means any pharmacy used to dispense 340B  
16 drugs for a covered entity, whether entity-owned or external.

17 "Biological product" has the meaning ascribed to that term  
18 in Section 19.5 of the Pharmacy Practice Act.

19 "Maximum allowable cost" means the maximum amount that a  
20 pharmacy benefit manager will reimburse a pharmacy for the  
21 cost of a drug.

22 "Maximum allowable cost list" means a list of drugs for  
23 which a maximum allowable cost has been established by a

1 pharmacy benefit manager.

2 "Pharmacy benefit manager" means a person, business, or  
3 entity, including a wholly or partially owned or controlled  
4 subsidiary of a pharmacy benefit manager, that provides claims  
5 processing services or other prescription drug or device  
6 services, or both, for health benefit plans.

7 "Retail price" means the price an individual without  
8 prescription drug coverage would pay at a retail pharmacy, not  
9 including a pharmacist dispensing fee.

10 "Third-party payer" means any entity that pays for  
11 prescription drugs on behalf of a patient other than a health  
12 care provider or sponsor of a plan subject to regulation under  
13 Medicare Part D, 42 U.S.C. 1395w-101~~7~~ et seq.

14 (b) A contract between a health insurer and a pharmacy  
15 benefit manager must require that the pharmacy benefit  
16 manager:

17 (1) Update maximum allowable cost pricing information  
18 at least every 7 calendar days.

19 (2) Maintain a process that will, in a timely manner,  
20 eliminate drugs from maximum allowable cost lists or  
21 modify drug prices to remain consistent with changes in  
22 pricing data used in formulating maximum allowable cost  
23 prices and product availability.

24 (3) Provide access to its maximum allowable cost list  
25 to each pharmacy or pharmacy services administrative  
26 organization subject to the maximum allowable cost list.

1 Access may include a real-time pharmacy website portal to  
2 be able to view the maximum allowable cost list. As used in  
3 this Section, "pharmacy services administrative  
4 organization" means an entity operating within the State  
5 that contracts with independent pharmacies to conduct  
6 business on their behalf with third-party payers. A  
7 pharmacy services administrative organization may provide  
8 administrative services to pharmacies and negotiate and  
9 enter into contracts with third-party payers or pharmacy  
10 benefit managers on behalf of pharmacies.

11 (4) Provide a process by which a contracted pharmacy  
12 can appeal the provider's reimbursement for a drug subject  
13 to maximum allowable cost pricing. The appeals process  
14 must, at a minimum, include the following:

15 (A) A requirement that a contracted pharmacy has  
16 14 calendar days after the applicable fill date to  
17 appeal a maximum allowable cost if the reimbursement  
18 for the drug is less than the net amount that the  
19 network provider paid to the supplier of the drug.

20 (B) A requirement that a pharmacy benefit manager  
21 must respond to a challenge within 14 calendar days of  
22 the contracted pharmacy making the claim for which the  
23 appeal has been submitted.

24 (C) A telephone number and e-mail address or  
25 website to network providers, at which the provider  
26 can contact the pharmacy benefit manager to process

1 and submit an appeal.

2 (D) A requirement that, if an appeal is denied,  
3 the pharmacy benefit manager must provide the reason  
4 for the denial and the name and the national drug code  
5 number from national or regional wholesalers.

6 (E) A requirement that, if an appeal is sustained,  
7 the pharmacy benefit manager must make an adjustment  
8 in the drug price effective the date the challenge is  
9 resolved and make the adjustment applicable to all  
10 similarly situated network pharmacy providers, as  
11 determined by the managed care organization or  
12 pharmacy benefit manager.

13 (5) Allow a plan sponsor contracting with a pharmacy  
14 benefit manager an annual right to audit compliance with  
15 the terms of the contract by the pharmacy benefit manager,  
16 including, but not limited to, full disclosure of any and  
17 all rebate amounts secured, whether product specific or  
18 generalized rebates, that were provided to the pharmacy  
19 benefit manager by a pharmaceutical manufacturer.

20 (6) Allow a plan sponsor contracting with a pharmacy  
21 benefit manager to request that the pharmacy benefit  
22 manager disclose the actual amounts paid by the pharmacy  
23 benefit manager to the pharmacy.

24 (7) Provide notice to the party contracting with the  
25 pharmacy benefit manager of any consideration that the  
26 pharmacy benefit manager receives from the manufacturer

1 for dispense as written prescriptions once a generic or  
2 biologically similar product becomes available.

3 (c) In order to place a particular prescription drug on a  
4 maximum allowable cost list, the pharmacy benefit manager  
5 must, at a minimum, ensure that:

6 (1) if the drug is a generically equivalent drug, it  
7 is listed as therapeutically equivalent and  
8 pharmaceutically equivalent "A" or "B" rated in the United  
9 States Food and Drug Administration's most recent version  
10 of the "Orange Book" or have an NR or NA rating by  
11 Medi-Span, Gold Standard, or a similar rating by a  
12 nationally recognized reference;

13 (2) the drug is available for purchase by each  
14 pharmacy in the State from national or regional  
15 wholesalers operating in Illinois; and

16 (3) the drug is not obsolete.

17 (d) A pharmacy benefit manager is prohibited from limiting  
18 a pharmacist's ability to disclose whether the cost-sharing  
19 obligation exceeds the retail price for a covered prescription  
20 drug, and the availability of a more affordable alternative  
21 drug, if one is available in accordance with Section 42 of the  
22 Pharmacy Practice Act.

23 (e) A health insurer or pharmacy benefit manager shall not  
24 require an insured to make a payment for a prescription drug at  
25 the point of sale in an amount that exceeds the lesser of:

26 (1) the applicable cost-sharing amount; or

1           (2) the retail price of the drug in the absence of  
2           prescription drug coverage.

3           (f) Unless required by law, a contract between a pharmacy  
4           benefit manager or third-party payer and a 340B entity or 340B  
5           pharmacy shall not contain any provision that:

6           (1) distinguishes between drugs purchased through the  
7           340B drug discount program and other drugs when  
8           determining reimbursement or reimbursement methodologies,  
9           or contains otherwise less favorable payment terms or  
10          reimbursement methodologies for 340B entities or 340B  
11          pharmacies when compared to similarly situated non-340B  
12          entities;

13          (2) imposes any fee, chargeback, or rate adjustment  
14          that is not similarly imposed on similarly situated  
15          pharmacies that are not 340B entities or 340B pharmacies;

16          (3) imposes any fee, chargeback, or rate adjustment  
17          that exceeds the fee, chargeback, or rate adjustment that  
18          is not similarly imposed on similarly situated pharmacies  
19          that are not 340B entities or 340B pharmacies;

20          (4) prevents or interferes with an individual's choice  
21          to receive a covered prescription drug from a 340B entity  
22          or 340B pharmacy through any legally permissible means,  
23          except that nothing in this paragraph shall prohibit the  
24          establishment of differing copayments or other  
25          cost-sharing amounts within the benefit plan for covered  
26          persons who acquire covered prescription drugs from a

1 nonpreferred or nonparticipating provider;

2 (5) excludes a 340B entity or 340B pharmacy from a  
3 pharmacy network on any basis that includes consideration  
4 of whether the 340B entity or 340B pharmacy participates  
5 in the 340B drug discount program;

6 (6) prevents a 340B entity or 340B pharmacy from using  
7 a drug purchased under the 340B drug discount program; or

8 (7) any other provision that discriminates against a  
9 340B entity or 340B pharmacy by treating the 340B entity  
10 or 340B pharmacy differently than non-340B entities or  
11 non-340B pharmacies for any reason relating to the  
12 entity's participation in the 340B drug discount program.

13 As used in this subsection, "pharmacy benefit manager" and  
14 "third-party payer" do not include pharmacy benefit managers  
15 and third-party payers acting on behalf of a Medicaid program.

16 (g) A violation of this Section by a pharmacy benefit  
17 manager constitutes an unfair or deceptive act or practice in  
18 the business of insurance under Section 424.

19 (h) A provision that violates subsection (f) in a contract  
20 between a pharmacy benefit manager or a third-party payer and  
21 a 340B entity that is entered into, amended, or renewed after  
22 July 1, 2022 shall be void and unenforceable.

23 (i) A pharmacy benefit manager shall not prohibit a  
24 pharmacist or pharmacy from, or indirectly punish a pharmacist  
25 or pharmacy for, making any written or oral statement or  
26 otherwise disclosing information to any federal, State,



1 county, or municipal official, including the Director or law  
2 enforcement, or before any State, county, or municipal  
3 committee, body, or proceeding if:

4 (1) the recipient of the information represents that  
5 it has the authority, to the extent provided by State or  
6 federal law, to maintain proprietary information as  
7 confidential; and

8 (2) before disclosure of information designated as  
9 confidential the pharmacist or pharmacy:

10 (A) marks as confidential any document in which  
11 the information appears; or

12 (B) requests confidential treatment for any oral  
13 communication of the information.

14 This includes sharing any portion of the pharmacy benefit  
15 manager contract with the Director pursuant to a complaint or  
16 a query regarding whether the contract is in compliance with  
17 this Article.

18 (j) ~~(i)~~ This Section applies to contracts entered into or  
19 renewed on or after July 1, ~~2022~~ 2023.

20 (k) ~~(j)~~ This Section applies to any group or individual  
21 policy of accident and health insurance or managed care plan  
22 that provides coverage for prescription drugs and that is  
23 amended, delivered, issued, or renewed on or after July 1,  
24 2020.

25 (Source: P.A. 101-452, eff. 1-1-20; 102-778, eff. 7-1-22;  
26 revised 8-19-22.)